



**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
DIVISION OF WATER POLLUTION CONTROL  
401 Church Street  
L&C Annex 6th Floor  
Nashville, TN 37243-1534**

February 11, 2006

Mr. Christopher Talley – Registered Agent  
CJC Development, LLC  
8266 South Fletcher Run, Circle #101  
Cordova, Tennessee 38016

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
RECEIPT #7006 0810 0000 1061 7160**

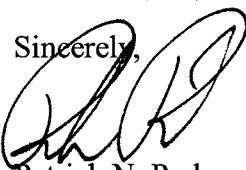
Subject: DIRECTOR'S ORDER NO. WPC08-0005  
MEMPHIS SPORTS TRAINING CENTER  
SHELBY COUNTY, TENNESSEE

Dear Mr. Talley:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

Corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Mark Jordan at (615) 532-0675.

Sincerely,  


Patrick N. Parker, Manager  
Enforcement and Compliance Section

PNP:MAJ

cc: DWPC – EFO-Memphis  
DWPC – Compliance File  
OGC



**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
DIVISION OF WATER POLLUTION CONTROL  
401 Church Street  
L&C Annex 6th Floor  
Nashville, TN 37243-1534**

February 11, 2008

Mr. Sherman McGill – Registered Agent  
ARCON of Tennessee, LLC  
9245 Poplar Avenue, Suite 8, #131  
Germantown, Tennessee 38138

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
RECEIPT #7006 0810 0000 1061 7153**

Subject: DIRECTOR'S ORDER NO. WPC08-0005  
MEMPHIS SPORTS TRAINING CENTER  
SHELBY COUNTY, TENNESSEE

Dear Mr. McGill:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

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If you or your attorney has questions concerning this correspondence, contact Mark Jordan at (615) 532-0675.

Sincerely,

Patrick N. Parker, Manager  
Enforcement and Compliance Section

PNP:MAJ

cc: DWPC – EFO-Memphis  
DWPC – Compliance File  
OGC

**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

<b>IN THE MATTER OF:</b>	)	
	)	
<b>CJC DEVELOPMENT, LLC and</b>	)	
<b>ARCON OF TENNESSEE, LLC</b>	)	<b>DIVISION OF WATER</b>
	)	<b>POLLUTION CONTROL</b>
	)	
<b>RESPONDENTS</b>	)	
	)	<b>CASE NUMBER WPC08-0005</b>

**DIRECTOR'S ORDER AND ASSESSMENT**

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

**PARTIES**

**I.**

Paul E. Davis is the duly appointed director of the Division of Water Pollution Control by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "division" and the "department" respectively).

**II.**

CJC Development, LLC, (hereinafter Respondent CJC) is an active corporation licensed to conduct business in the state of Tennessee and is the owner/developer of Memphis Sports Training Center, a commercial development in Shelby County (hereinafter the "site"). Service of process may be made on Respondent CJC through Christopher Talley, Registered Agent, at 8266 South Fletcher Run, Circle #101, Cordova, Tennessee 38016.

**III.**

ARCON of Tennessee, LLC, (hereinafter Respondent ARCON) is an active corporation licensed to conduct business in the state of Tennessee and is contracted by Respondent CJC to

conduct construction activities at the site. Service of process may be made on Respondent ARCON through Sherman McGill, Registered Agent, at 9245 Poplar Avenue, Suite 8, #131, Germantown, Tennessee 38138.

## **JURISDICTION**

### **IV.**

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.*, the Water Quality Control Act (the “Act”), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”). Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

### **V.**

The Respondents are “persons” as defined by T.C.A. § 69-3-103(20) and as herein described, have violated the Act.

### **VI.**

Tennessee Code Annotated § 69-3-108 requires a person to obtain coverage under a permit from the department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the general permit for Storm Water Discharges Associated with Construction

Activity (hereinafter the “TNCGP”) may be obtained by submittal of a Notice of Intent (NOI), a site specific Storm Water Pollution Prevention Plan (SWPPP), and appropriate fee.

## VII.

Pursuant to T.C.A. § 69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (hereinafter the “ARAP”) that is not governed by a general permit or a § 401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

## VIII.

The unnamed tributary to Mary’s Creek and an unnamed wetland, described herein, are “waters of the state” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife. Additionally, Mary’s Creek and its unnamed tributaries are listed as impaired due to phosphorous levels, low dissolved oxygen, *escherichia coliform*, and loss of biological integrity from siltation from discharges from Shelby County Municipal Separate Storm Sewer System (MS4) area.

## **FACTS**

### **IX.**

On October 6, 2005, the division's Natural Resources Section (NRS) received an application from Dr. Tom West, then owner of the site, requesting the issuance of an Individual ARAP for the filling of one acre of jurisdictional wetlands on the site. The NRS issued an Individual ARAP for this activity on February 28, 2006, and assigned it tracking number NRS05.386. This ARAP required compensatory mitigation by the creation of 4 acres of wetland on site.

### **X.**

On March 28, 2007, a NOI, SWPPP, and appropriate fee were submitted to the Memphis Environmental Field Office (MEFO) by Respondent CJC, requesting coverage under the TNCGP for construction activities at the site. Respondent ARCON was listed on the NOI as the primary contractor at the site. The division issued coverage under the TNCGP for these activities on April 12, 2007.

### **XI.**

On July 27, 2007, Respondent CJC submitted an application to the division's Natural Resources Section (NRS) requesting issuance of an Individual ARAP for the filling and relocation of approximately 300 linear feet of the unnamed tributary to Mary's Creek lying within the site boundaries.

## **XII.**

On August 29, 2007, the NRS sent correspondence to Respondent CJC, acknowledging receipt of the application and requesting additional technical details in order to the continue review of the application. Tracking number NRS07.0239 was assigned to this application.

## **XIII.**

On October 2, 2007, the Shelby County Storm Water Program issued a Notice of Potential Discharge (NOP) to Respondent CJC for violations noted during a site inspection conducted on September 28, 2007, and by copy, notified division personnel in the MEFO of these violations.

## **XIV.**

On October 24, 2007, division personnel in the MEFO issued a Notice of Violation (NOV) to Dr. Tom West for failure to meet the terms and conditions of Individual ARAP NRS05.386. The NOV required a written response by November 7, 2007.

## **XV.**

On October 31, 2007, the division received correspondence from Dr. Tom West, indicating that the site had been sold to Respondent CJC in November 2006, prior to any construction activities.

## **XVI.**

On November 20, 2007, division personnel conducted a site inspection and noted that construction activities had resulted in the filling in of approximately 200 linear feet of the

unnamed tributary to Mary's Creek and approximately one acre of wetland, causing a condition of pollution to waters of the state. Additionally, approximately 100 linear feet of the unnamed tributary was dry due to the redirection of flow by construction activities, causing a condition of pollution to waters of the state. A subsequent file review determined that neither of the Respondents had requested or been issued authorization for the wetland fill and that written authorization under NRS07.0239 for the filling and relocation of the unnamed tributary had not been issued.

## **XVII.**

On December 4, 2007, the division issued a NOV to Respondent CJC for the violations noted during the November 20, 2007 site inspection. Respondent CJC was instructed to immediately transfer coverage under ARAP NRS05.386 from Dr. Tom West and by March 15, 2008, complete the wetland mitigation requirements. Respondent CJC was further instructed to submit by January 3, 2008, a Corrective Action Plan (CAP) detailing the measures proposed to restore the lost stream length and maintain hydrology within the stream and to submit a copy of the "Notice of Land Use Restrictions" required by NRS05.386. The NOV was copied to the NRS.

## **XVIII.**

On December 7, 2007, the NRS terminated the application submitted on July 27, 2007 for the filling and relocation of the unnamed tributary based on the site conditions noted during the November 20, 2007 site inspection.



## **XIX.**

On December 27, 2007, division personnel conducted a follow up site visit and noted that a large portion of the site was bare and unstable. Division personnel noted sediment laden water from the site being discharged into the unaltered portion of the unnamed tributary.

## **XX.**

On January 22, 2007, the division issued a NOV to Respondent CJC for failure to submit the documents requested in the December 4, 2007, NOV. Respondent CJC was instructed to submit the requested documents by February 7, 2008.

## **VIOLATIONS**

## **XXI.**

By altering waters of the state without authorization under an ARAP, the Respondents have violated T.C.A. §§ 69-3-108(b) and 114(b), which state in part:

§ 69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any Waters of the State;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;

(6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

§ 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

## **XXII.**

By causing a condition of pollution in the unnamed tributary to Mary's Creek and the wetland adjacent to the unnamed tributary to Mary's Creek, the Respondents have violated T.C.A. Section 69-3-114(a), which states:

§ 69-3-114(a):

It shall be unlawful for any person to discharge any substance into the waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in §69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

## **ORDER AND ASSESSMENT**

## **XXIII.**

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondents.

1. The Respondents shall, within 7 days of receipt of this ORDER AND ASSESSMENT, establish effective EPSC measures, specifically including but not limited to stabilization of all disturbed soils, such that sediment is not allowed to leave the site or enter waters of the state.
2. The Respondents shall maintain EPSC measures until such time as all land disturbance activities at the site are complete and erosion-preventive permanent cover is established.
3. The Respondents shall, within 7 days of establishing effective EPSC measures, submit written documentation and photographic evidence indicating that these measures are in place. The Respondents shall submit this written documentation and photographic evidence to the Water Pollution Control Manager in the MEFO at Suite E-645 Perimeter Park, 2510 Mount Moriah Road, Memphis, Tennessee 38115, and a copy of the written documentation and photographic evidence to the Water Pollution Control Enforcement and Compliance (E&C) Section Manager, at 401 Church Street, 6<sup>th</sup> Floor L&C Annex, Nashville, Tennessee 37243-1534.
4. Respondent CJC shall, within 14 days of receipt of this ORDER AND ASSESSMENT, submit a written request for the transference of NRS05.386 to Respondent CJC, to the Manager of the Natural Resources Section at 401 Church Street, 7<sup>th</sup> Floor L&C Annex, Nashville, Tennessee 37243-1534.
5. The Respondents shall, within 60 days of transference of NRS05.386, complete the wetland mitigation required therein and submit documentation of that mitigation, along with the Notice of Land Use Restrictions, to the Water Pollution Control Manager in the

MEFO at the address shown above, and a copy to the Manager of the NRS Section at the address shown above.

6. The Respondents shall, within 30 days of receipt of this ORDER AND ASSESSMENT, submit a Corrective Action Plan (CAP), detailing the proposed measures to be taken to restore the lost stream length and hydrology needed to maintain stream flow in the unaltered segment of the unnamed tributary to Mary's Creek. These documents shall be submitted for review and approval, to the Water Pollution Control Manager in the MEFO and a copy to the NRS at the respective addresses shown above.
7. The Respondents shall, within 90 days of receiving approval from the division, complete the actions authorized in the approved CAP and submit documentation of completion to the Water Pollution Control Manager in the MEFO and a copy to the NRS at the respective addresses shown above.
8. The Respondents shall pay a CIVIL PENALTY of THIRTY THOUSAND DOLLARS (\$30,000.00) to the division, hereby ASSESSED to be paid as follows:
  - a. The Respondents shall, within 30 days of entry of this ORDER, pay a CIVIL PENALTY in the amount of FIVE THOUSAND DOLLARS (\$5,000.00).
  - b. If the Respondents fail to comply with Part XXIII, item 1 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of THREE THOUSAND DOLLARS (\$3,000.00), payable within 30 days of default.
  - c. If the Respondents fail to comply with Part XXIII, item 2 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of THREE THOUSAND DOLLARS (\$3,000.00), payable within 30 days of default.

- d. If the Respondents fail to comply with Part XXIII, item 3 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of THREE THOUSAND DOLLARS (\$3,000.00), payable within 30 days of default.
- e. If the Respondents fail to comply with Part XXIII, item 4 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of FOUR THOUSAND DOLLARS (\$4,000.00), payable within 30 days of default.
- f. If the Respondents fail to comply with Part XXIII, item 5 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of FOUR THOUSAND DOLLARS (\$4,000.00), payable within 30 days of default.
- g. If the Respondents fail to comply with Part XXIII, item 6 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of FOUR THOUSAND DOLLARS (\$4,000.00), payable within 30 days of default.
- h. If the Respondents fail to comply with Part XXIII, item 7 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of FOUR THOUSAND DOLLARS (\$4,000.00), payable within 30 days of default.


The Respondents shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this ORDER. In order to be eligible for this time extension, the Respondents shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the

Respondents fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondents are advised that the foregoing ORDER is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the ORDER will be one factor considered in any decision whether to take enforcement action against the Respondents in the future.

Issued by the director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 11<sup>th</sup> day of February 2008.

  
\_\_\_\_\_  
Paul E. Davis, P.E.  
Director, Division of Water Pollution Control

#### **NOTICE OF RIGHTS**

Tennessee Code Annotated §§ 69-3-109, 115, allow any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548".

If the required written petition is not filed within thirty (30) days of receipt of this ORDER AND ASSESSMENT, the ORDER AND ASSESSMENT shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the ORDER

AND ASSESSMENT will not be subject to review pursuant to T.C.A. §§ 69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act.) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payment of the civil penalty shall be made to "Treasurer, State of Tennessee" and shall be sent to the Division of Fiscal Services, Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14<sup>th</sup> Floor L & C Annex, 401 Church Street, Nashville, TN 37243. The case number, shown on the first page of this Order and Assessment, should be included on or with the payment. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6<sup>th</sup> Floor L & C Annex, 401 Church Street, Nashville, TN 37243.